

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRANCE WILLIAMS,	§
	§
Defendant Below-	§ No. 681, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
STATE OF DELAWARE,	§ for New Castle County
	§ Cr. ID 1104000002
Plaintiff Below-	§
Appellee.	§

Submitted: April 9, 2012
Decided: April 13, 2012

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 13th day of April 2012, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Terrance Williams, filed this appeal from the Superior Court's sentence for a violation of probation (VOP). The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Williams' opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Williams pled guilty in October 2011 to one count of Possession of a Deadly Weapon by a Person Prohibited.¹ The Superior Court sentenced Williams, effective April 1, 2011, to eight years at Level V incarceration, to be suspended immediately for seven years and six months at Level IV, to be suspended after four months at Level IV for one year at Level III probation. Williams did not appeal. On November 23, 2011, Williams was found in violation of the terms of his probation. The Superior Court sentenced him, effective November 10, 2011, to seven years and three months at Level V incarceration to be suspended after serving ninety days in prison for boot camp, and upon successful completion of boot camp the balance of the Level V time is to be suspended for six months at Level IV supervision followed by one year at Level III probation. This appeal followed.

(3) In his opening brief on appeal, Williams asserts that the prosecutor presented false and misleading evidence and that the Superior Court sentenced him with a closed mind, which is reflected in the excessive sentence imposed.

(4) We find no merit to Williams' contentions. In a VOP hearing, unlike a criminal trial, the State is only required to prove by a preponderance of the evidence that the defendant violated the terms of his probation.² A preponderance of evidence means "some competent evidence" to "reasonably satisfy the judge

¹ DEL. CODE ANN. tit. 11, § 1448 (2007).

² *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

that the conduct of the probationer has not been as good as required by the conditions of probation.”³ The record in this case reflects that Williams admitted to violating his curfew and absconding from Level IV supervision. The Superior Court was entitled to rely on these admissions and did not err in finding that Williams had violated probation.

(5) Having determined that Williams had violated his probation, the Superior Court was authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence.⁴ The Superior Court’s original sentence imposed seven and a half years of suspended time. In sentencing him on the VOP, the Superior Court imposed seven years and three months to be suspended after Williams served ninety days in prison followed by his completion of boot camp. The sentence was well within statutory limits, was not excessive, and in no way reflects a closed mind by the sentencing judge.⁵

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³ *Id.* (quoting *Collins v. State*, 897 A.2d 159, 160 (Del. 2006)).

⁴ 11 Del. C. § 4334(c) (2007).

⁵ See *Weston v. State*, 832 A.2d 742, 746 (Del. 2003).